IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1198 OF 2006

B.G.Rege
Age : 68 years
Proprietor of M/s.B.G.Rege
& Co., A Firm, having office ..Applicant
at 47/A Gokhale Road (North),
Dadar, Mumbai – 400 028

V/s.

1. R.N.Borkar,
residing at Block No.2

2. Smt.S.J.Manjrekar,
residing at Block No.3

3. Shankarlal Pawani (Abated),
residing at Block No.4

4. S.V.Athavle,
residing at Block No.5

5. U.K.Sukhatankar,
residing at Block No.6

6. N.R.Shirseekar,
residing at Block No.7

7. V.C.Gandhi,
residing at Block No.8

8. D.G.Jaykar,
residing at Block No.9

9. A.P.Aryamane,
residing at Block No.10
All Adults, Indian Inhabitants,
residing in Ganesh Daya Bhuvan
No.1, Lokmanya Tilak Road,

Borivali (West),
Mumbai – 400 092

10. D.K.Patil (Settled),
Adult, Indian Inhabitant,
at Kophrad, Taluka Vasai,
District Thane, Post Agashi
and Block No.1

11. Smt.D.R.Joshi,
residing at Block No.2

12. Smt.R.B.Sawant(Settled),
residing at Block No.4

13. V.R.Patil,
residing at Block No.5

14. S.P.Kulapkar(Settled),
residing at Block No.6

15. Smt.S.S.Paradkar,
residing at Block No.7

16. Smt.S.A.Mahadalkar(Settled),
residing at Block No.8

17. D.R.Mahadalkar(Settled),
residing at Block No.9,
All Adults, Indian Inhabitants,
Ganesh Daya Bhuvan No.II,
Lokmanya Tilak Road, Borivali
(West), Mumbai – 400 092

AND

18. The State of Maharashtra

..Respondents

Mr.G.V.Nagarseth for applicant
Mr.Vishwajeet Sawant and S.M.Nayak for
respondent Nos.2, 4, 5, 7, 8, 9 & 11 to 17
Mr.A.S.Shitole, A.P.P.

CORAM : A.S.OKA, J.

DATE : DECEMBER 20TH, 2006

ORAL JUDGMENT

1. The private complaint filed by the complainant against respondent Nos.1 to 17 has resulted in acquittal. The offences alleged against the said Respondents were under Section 339, 341, 441, 442, 445, 447, 448 of the Indian Penal Code read with Section 12 of the MOFA Act. The applicant is a proprietor of a firm carrying on business as builder and developer. According to his case, an agreement was executed by owners of immovable property in his favour by virtue of which he constructed two buildings on the property described in para 1 of the complaint. According to him, respondent Nos.1 to 17 entered into agreements with him for acquiring the flats in the said buildings. According to the case of the applicant, he completed construction of Ganesh Daya Bhuvan No.1 around December, 1982. According to the applicant, he requested respondent Nos.1 to 9

to pay the amounts agreed under the agreements. The allegation of the applicant is that in the period between December 1982 to January 1983, the respondent Nos.1 to 9 broke open the locks put up by the applicant on respective flats and without payment of full price they unauthorizedly entered into respective flats. When the applicant visited the said building to again put on his locks, the respondent Nos.1 to 9 obstructed him and restrained him unlawfully. The applicant filed a complaint on the basis of which police did not take any action.

2. Similarly, the respondent Nos.10 to 17 without paying the dues broke open the locks on the respective flats in the building Ganesh Daya Bhuvan No.2 and entered into the same without paying balance consideration to the applicant.

3. The learned advocate for the applicant submitted that this is a case where admittedly, the respondent Nos.1 to 18 took forcible possession of the flats which were agreed to be sold to them. He submitted that the said respondents had no right to

take the law in their own hands by breaking open locks. He submitted that the learned judge has taken a very liberal view of the matter.

4. I have considered the submissions. The learned judge has observed that there was no specific evidence on record to show that what was the exact cost of the flats. It was found that the evidence of the complainant was vague and not specific as regards what was the amount allegedly due and payable by individual flat purchasers. The learned judge observed that unless the complainant comes to the Court with a specific statement of unpaid amounts, it is difficult to arrive at the conclusion that some liability was in existence against the individual flat owner. The learned judge found that there were no notices issued demanding any amounts from the flat purchasers. The learned judge held that how much amount was paid and how much amount was due and payable by the individual flat purchasers was not clear from the record. The learned Judge found that the Applicant builder himself failed to comply with his

contractual as well as statutory obligations.

5. Considering oral and documentary evidence on record, I find that the view taken by the learned Metropolitan Magistrate is certainly a possible view. No case is made out for grant of leave. The Application is rejected.

6. It is made clear that notwithstanding the rejection of the application, Civil suit, if pending between the parties, will be decided on its own merits, without being influenced by observations made in this order.

(A.S.OKA, J.)